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LAB0321

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**UNITED STATES OF AMERICA,**

*Plaintiff,*

v.

**GINO SILVA,**

*Defendant,*

and

**NATIONAL FINANCIAL SERVICES, INC.,  
and its successors or assigns,**

*Garnishee.*

**Hon. FAITH S. HOCHBERG**

**CRIMINAL No. 08-868-001**

**APPLICATION AND ORDER  
FOR WRIT OF GARNISHMENT**

The United States of America, plaintiff, makes this application in accordance with 28 U.S.C. § 3205(b)(1) to the Clerk of the United States District Court to issue a Writ of Garnishment upon the judgment entered against the defendant, Gino Silva, social security number \*\*\*\*\*4840, whose last known address is Union, NJ 07083 in the above cited action in the amount of \$851,013.90, plus interest at the rate of 0% per annum and penalties.

The total balance due and owing as of September 2, 2009 is \$843,413.90.

Demand for payment of the above-stated debt was made upon the debtor not less than 30 days from September 2, 2009, and debtor has failed to satisfy the debt.

The Garnishee is believed to have possession of property in which Gino Silva has a substantial non-exempt interest. More specifically, the Garnishee is a financial institution which is believed to have in its custody, control, or possession, property belonging to the judgment debtor, Gino Silva.

The name and address of the Garnishee or his authorized agent is:

National Financial Services, Inc.  
Agent for Fidelity Management Trust Co.  
200 Liberty Street - 5th Floor  
New York, NY 10281

Based upon the foregoing, the United States respectfully requests the Court to enter an Order directing the Clerk of the United States District Court to issue a Writ of Garnishment.


RALPH J. MARRA, JR.  
Acting United States Attorney



By: LEAH A. BYNON  
Assistant U.S. Attorney

IT IS, on this 29<sup>th</sup> day of Sept., 2009,

**ORDERED**, that the Clerk of the Court shall issue the Writ of Garnishment.

  
HON. FAITH S. HOCHBERG, JUDGE  
UNITED STATES DISTRICT COURT

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**UNITED STATES DISTRICT COURT  
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**Hon. FAITH S. HOCHBERG**

**CRIMINAL No. 08-868-001**

**CLERK'S NOTICE OF  
POST-JUDGMENT  
GARNISHMENT**

**TO THE ABOVE-NAMED DEFENDANT AND ALL OTHER PERSONS INTERESTED:**

You are hereby notified that property in the possession, custody, or control of National Financial Services, Inc., in which you have an interest, is being taken by the United States of America which has a Court judgment in Criminal No. 08-868-001 in the sum of \$851,013.90. A balance of \$843,413.90 remains outstanding.

In addition, you are hereby notified that there are exemptions under the law which may protect some of the property from being taken by the Government if Gino Silva can show that the exemptions apply. Attached is a summary of the exemptions which are applicable.

If you are Gino Silva you have a right to ask the court to return your property to you if you think you do not owe the money to the Government that it says you do, or if you think the property the Government is taking qualifies under one of the above exemptions.

The instructions for objection to the Answer of the Garnishee and for obtaining a hearing on the objections are set forth in the "Notice of Garnishment and Instructions to the

Above-named Defendant" served upon you by the United States of America.

If you want a hearing, you must notify the court within 20 days after receipt of the notice. Your request must be in writing.

If you wish, you may use this notice to request the hearing by completing the Request for Hearing Form which is attached to the Writ of Garnishment. You must either mail it or deliver it in person to the Clerk of the United States District Court at the King Federal Courthouse, 50 Walnut Street, Newark, N.J. 07102. You must also send a copy of your request to the United States Attorney, Financial Litigation Unit at 970 Broad Street, 7th Floor, Newark, NJ 07102, so the Government will know you want a hearing.

The hearing will take place within 5 days after the Clerk receives your request, if you ask for it to take place that quickly, or as soon after that as possible.

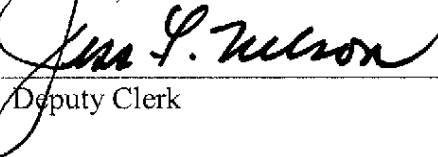
At the hearing you may explain to the judge why you think you do not owe the money to the Government. If you do not request a hearing within 20 days of receiving this notice, a Court Order will be entered attaching the wages, monies, and/or commissions which will then be applied against the judgment owed the Government.

If you think you live outside the Federal judicial district in which the court is located, you may request, not later than 20 days after you receive this notice, that this proceeding to take your property be transferred by the court to the Federal judicial district in which you reside. You must make your request in writing, and either mail it or deliver it in person to the Clerk of the District Court at the King Federal Courthouse, 50 Walnut Street, Newark, N.J. 07102. You must also send a copy of your request to the United States Attorney, Financial Litigation Unit at 970 Broad Street, 7th Floor, Newark, NJ 07102, so the Government will know you want the proceeding to be transferred.

Be sure to keep a copy of this notice for your own records. If you have any questions about your rights or about this procedure, you should contact a lawyer, an office of public legal assistance, or the clerk of the court. The clerk is not permitted to give legal advice, but can refer you to other sources of information.

WILLIAM T. WALSH  
CLERK, U.S. DISTRICT COURT

By:

  
Deputy Clerk

## INSTRUCTIONS TO DEFENDANT DEBTOR ON HOW TO CLAIM EXEMPTIONS

The United States of America has applied for a Writ of Garnishment to be issued against your property. It will be issued because there is a judgment against you.

The law provides that certain property and wages cannot be taken. Such property is said to be exempted. The attached Claim for Exemption Form lists the exemptions under federal law and/or New Jersey state law which are applicable to you. There is no exemption solely because you are having difficulty paying your debts.

If you claim an exemption from garnishment, you should do the following promptly:

1. Fill out the attached Claim for Exemption Form.
2. Deliver or mail the Form to the Clerk's Office of the United States District Court for the District of New Jersey, King Federal Courthouse, 50 Walnut Street, Newark, N.J. 07102.
3. Deliver or mail the Forms to the Counsel of the United States, Leah A. Bynon, Assistant U.S. Attorney, Financial Litigation Unit, 7th Floor, 970 Broad Street, Newark, New Jersey 07102.

If you elect, you have the right to a hearing within five business days, or as soon as possible, from the date you file the completed Claim for Exemption Form with the Clerk. In order to obtain this hearing, you must check the box provided on the attached Claim for Exemption Form. You will be notified as soon as possible of the date, time and place of hearing.

On the day of the hearing, you should come to court ready to explain why your property is exempted, and you should bring any documents which may help you prove your case. If you do not come to court at the designated time and prove that your property is exempt, you may lose some of your rights.

If the listed exemptions on the Form are not applicable and you do not claim an exemption, do not complete and file the Claim for Exemption Form.

It may be helpful to you to seek the advice of an attorney in this matter.

**CLAIM FOR EXEMPTION FORM**  
**EXEMPTIONS UNDER FEDERAL LAW (18 U.S.C. § 3613)**

NOTE: 18 U.S.C. § 3613(a), the federal statute governing liens arising from criminal fines and restitution obligations, generally incorporates the exemptions available to individual taxpayers under the Internal Revenue Service Code.

I claim that the exemption(s) from enforcement which are checked below apply in this case:

- ☐ 1. Wearing apparel and school books.--Such items of wearing apparel and such school books as are necessary for the debtor or for members of his family.
- ☐ 2. Fuel, provisions, furniture, and personal effects.--So much of the fuel, provisions, furniture, and personal effects in the Debtor's household, and of the arms for personal use, livestock, and poultry of the debtor, as does not exceed \$6,250 in value.
- ☐ 3. Books and tools of a trade, business, or profession.--So many of the books, and tools necessary for the trade, business, or profession of the debtor as do not exceed in the aggregate \$3,125 in value.
- ☐ 4. Unemployment benefits.--Any amount payable to an individual with respect to his unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, of any State, or of the District of Columbia or of the Commonwealth of Puerto Rico.
- ☐ 5. Undelivered mail.--Mail, addressed to any person, which has not been delivered to the addressee.
- ☐ 6. Certain annuity and pension payments.--Annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll (38 U.S.C. 1562), and annuities based on retired or retainer pay under Chapter 73 of Title 10 of United States Code.
- ☐ 7. Workmen's Compensation.--Any amount payable with respect to compensation (including any portion thereof payable with respect to dependents) under a workmen's compensation law of the United States, any State, the District of Columbia, or the Commonwealth of Puerto Rico.

- \_\_\_\_\_ 8. Judgments for support of minor children.--If the debtor is required by judgment of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of his minor children, so much of his salary, wages, or other income as is necessary to comply with such judgment.
- \_\_\_\_\_ 9. Certain service-connected disability payments.-- Any amount payable to an individual as a service-connected (within the meaning of section 101(16) of Title 38, United States Code) disability benefit under--(A) sub-chapter II, III, IV, V, or VI of Chapter 11 of such Title 38 or (B) Chapter 13, 21, 23, 31, 32, 34, 35,37, or 39 of such Title 38.
- \_\_\_\_\_ 10. Assistance under Job Training Partnership Act.  
--Any amount payable to a participant under the Job Training Partnership Act (29 U.S.C. 1501 et seq.) from funds appropriated pursuant to such Act.
- \_\_\_\_\_ 11. Minimum exemptions for wages, salary and other income. The exemptions under 26 U.S.C. § 6334(a)(9) do not apply in criminal cases. The exceptions under the Consumer Credit Protection Act, 15 U.S.C. § 1673, for disposable earnings, automatically apply and do not need to be claimed. The aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed (1) 25 % of his disposable earnings for that week, or (2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage in effect at the time the earnings are payable, whichever is less.

The statements made in this claim of exemptions and request for hearing as to exemption entitlement and fair market value of the property designated are made and declared under penalty of perjury that they are true and correct.

\_\_\_\_\_ I hereby request a court hearing to decide the validity of my claims. Notice of the hearing should be given to me by mail at:

( \_\_\_\_\_ ) or telephonically at ( \_\_\_\_\_ )  
Address Phone No.

\_\_\_\_\_  
Signature  
Gino Silva

\_\_\_\_\_  
Date

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*Garnishee.*

**Hon. FAITH S. HOCHBERG**

**CRIMINAL No. 08-868-001**

**REQUEST FOR HEARING**

TO: CLERK'S OFFICE

☐ I hereby request that the court conduct a hearing in the above matter as soon as possible after the clerk receives this request for a hearing because:

☐ I do not owe the money to the United States that it says I do.

☐ The property that the United States is taking is exempt (See attached completed Claim for Exemption form).

Notice of the hearing should be given to me by mail at

\_\_\_\_\_  
(Address)

or by telephone at \_\_\_\_\_  
(Telephone Number)

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature  
Gino Silva



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**Hon. FAITH S. HOCHBERG**

**CRIMINAL No. 08-868-001**

**WRIT OF GARNISHMENT**

GREETINGS TO: National Financial Services, Inc.  
Agent for Fidelity Management Trust Co.  
200 Liberty Street - 5th Floor  
New York, NY 10281

An Order Granting Application of the United States for a Writ of Garnishment against the property of Gino Silva, defendant, has been filed with this Court. A judgment has been entered against the above-named defendant in the amount of \$851,013.90, plus interest and penalties, computed through September 2, 2009.

You are required to begin withholding in accordance with this garnishment from the

date you were served with these papers.

You are required by law to answer in writing, under oath, within ten (10) days, whether or not you have in your custody, control or possession, any property in which has a substantial non-exempt interest. You must state the amounts you anticipate owing Gino Silva in the future.

You must file the original written answer to this writ within ten (10) days of your receipt of this writ with the United States District Clerk at: King Federal Courthouse, 50 Walnut Street, Newark, N.J. 07102. Additionally, you are required by law to serve a copy of this writ upon the debtor and upon the United States Attorney, Financial Litigation Unit, 970 Broad Street, 7th Floor, Newark, NJ 07102.

Under the law, there is property which is exempt from this Writ of Garnishment. Property which is exempt and which is not subject to this order is listed on the attached Claim for Exemption form.

If you fail to answer this writ or withhold property in accordance with this writ, the United States of America may petition the Court for an order requiring you to appear before the Court. If you fail to appear or do appear and fail to show good cause why you failed to comply with this writ, the Court may enter a judgment against you for the value of the debtor's non-exempt property. It is unlawful to pay or deliver to the defendant any item attached by this writ.

DATED: 9/30/09

WILLIAM T. WALSH  
UNITED STATES DISTRICT COURT CLERK

By:

*James P. Nelson*  
DEPUTY CLERK